IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

Ram Jeevan Dubey
vs
State of Rajasthan & Ors.

S.B. CIVL WRIT PETIITON NO.320/2001 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 17th August, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Harish Purohit, Advocate, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT: -

In this writ petition, the petitioner has challenged the order dated 25.6.1994(Annex.1) whereby a charge-sheet under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (in short the C.C.A. Rules of 1958) was served upon him and also challenged the order dated 8.9.2000 (Annex.12) by which, the disciplinary authority on the charges being proved

by the inquiry officer against the petitioner, awarded penalty of withholding of 50% of pension forever.

It may be stated that the petitioner alongwith three others, namely, Shri Chetan Dev Upadhayay, Superintendent, Shri Chatar Singh, Head Warder and Shri Ram Singh, Warder were also served charge-sheet under Rule 16 of the C.C.A. Rules in relation to the same incident. The charge against the petitioner was that when he was working as Jailor in Central Jail, Udaipur, he opened the jail at 6.15 A.M. on 16.11.1991 much before the rise of the sun and when there was still dark, which was in violation of Part VIII of sub-rule IX of Rule 164 of the Rajasthan Prisoners Rules, 1951 (in short the Rules of 1951). According to these rules, the jail should be opened only after the sun rises when sufficient light is available for easy visibility. The petitioner therefore violated the said Rules. Another charge against him was that he on that day did not open the prison's ward and barrack in his presence, but left the same on the responsibility of Acting Head Chief warder and Incharge Chief Warder whereas

according to Rule 148 of the Rules of 1951, he should have got the gates opened in his own presence. On account of this conduct of the petitioner, the under trial prisoner Kailash S/o Shri Rama Meena crossed over the outer wall of the jail by using the rope. The petitioner therefore violated the Rules of 148 and 186 of the Rules of 1951. He was also charged for not checking the jail and not ensuring that the bushes and trees were properly cut so that the prisoners did not take advantage of the same and may not escape from the jail. He also did not ensure that the electric wires on the wall around the jail had live current therein. He therefore violated the Rules of 1951. Last charge against him was that even though he was allotted the house in the Jail premises itself but instead of residing there chose to reside at his own residence in city. The inquiry was conducted against the petitioner alongwith three others under Section 18 of the CCA Rules. The inquiry officer in his report found the charges proved against the petitioner and other delinquent officers. He gave his report dated 31st July, 1998. This report is a detailed report, which runs into as many as 48 pages and

out of which, 15 pages have been devoted to the charges against the petitioner alone in discussion of evidence and recording of finding. A copy of this inquiry report was served upon the petitioner by the disciplinary authority vide its letter dated 26th Oct., 1998. The petitioner submitted his representation to the disciplinary authority on 16th Nov., 1998. The disciplinary authority while taking into consideration the entire material available on record, held that the charges have been proved against the petitioner and awarded punishment of withholding of his 50% pension forever. The disciplinary authority in case of Shri Chetan Dev Upadhayay, Superintendent, Central Jai, awarded penalty of reversion for a period of three years with a direction that during the period of reversion, he shall not be entitled to any increments and other two delinquent officers Shri Chatar Singh and Ram Singh were dismissed from service.

I have heard learned counsel for the parties. Shri Harish Purohit, learned counsel for the petitioner has argued that the charges against the petitioner have not been proved by the department

inasmuch as there was absolutely no evidence against the petitioner. The order passed by the disciplinary authority with respect to charges no.1,2 and 3, is non-speaking order. He further argued that the inquiry officer and disciplinary authority have not appreciated the evidence on record in its true perspective. He has also argued that there was absolutely no evidence on record to show that when the jail gets were opened at 6.30 A.M. it was still dark and sun had not risen. Lastly, it has been argued that the penalty of stoppage of pension forever is too harsh and excessive and was disproportionate to the gravity of the charges.

Shri Rameswhar Dave, learned Dy. Government Advocate appearing for the respondents-State argued that the charges against the petitioner as also against other three delinquents have been found proved. The inquiry was conducted strictly in accordance with the provisions contained in Rule 16 of the C.C.A. Rules. During the entire disciplinary proceedings, the principle of naturals justice were complied with and petitioner was given full opportunity to defend his case. He

has argued that as per the conduct of the petitioner, the authorities would have gone for the choice of a graver penalty, which could even be dismissal of service, which has in fact, been made in the case of other two delinquent officers but taking a lenient view, only 50% of his pension has been withheld forever.

I have considered the arguments advanced by both the learned counsel for the parties and perused the inquiry report, the order passed by the disciplinary authority and other material on record.

The inquiry officer has thread bare discussed entire evidence in the matter and according to his appreciation of the evidence that has come on record, he recorded the finding that the charges against the petitioner have been proved. In the present proceedings, this court has very limited jurisdiction. This Court cannot re-appreciate the evidence or examined the correctness of the findings unless there is violation of any right. The penalty has been imposed after making proper inquiry in accordance with provisions contained in

the rules. The petitioner has not been able to point out any glaring mistake committed by the disciplinary authority and/or the inquiry officer during the proceedings. When the inquiry was conducted, the petitioner was given full opportunity to lead his evidence and cross-examine the witnesses. This court cannot substitute the findings of facts recorded by the inquiry officer which have been approved by the disciplinary authority. This court in writ jurisdiction cannot decide the disputed questions of facts by re-appreciating the evidence recorded during inquiry. The inquiry officer as well as disciplinary authority have rightly arrived at the conclusion that it was still dark at 6.15 A.M. on 16.11.1991 when the said incident took place and on account of conduct of the petitioner and others, they have violated the Rules of 1951. Therefore, the inquiry officer as well as the disciplinary authority were right in imposing penalty against the petitioner, which was also imposed on four officials as well.

In view of the above discussion, the writ petition is dismissed.

There shall be no order as to costs.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-